

Circuit Court for Baltimore County
Case No.: 03-K-06-000785

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1719

September Term, 2021

GARY ALEXANDER WESLEY, SR.

v.

STATE OF MARYLAND

Wells, C.J.,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 1, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from a circuit court’s denial of a motion to correct an illegal sentence. For the reasons stated herein, we affirm.

BACKGROUND

Following trial in the Circuit Court for Baltimore County in 2007, a jury found Gary Alexander Wesley, Sr., appellant, guilty of second-degree murder and second-degree assault. Thereafter, the court sentenced him to thirty years’ imprisonment for second-degree murder plus ten years’ imprisonment for second-degree assault to be served consecutively, as follows:

Mr. Wesley, please stand. The jury in this case has spoken and I am forbidden under the law to comment on that verdict. As such, the sentence of the Court is, in count one, second degree murder, thirty years in the Department of Correction [sic] dating from February the 2nd, 2006 and in count three, second degree assault, the sentence of the Court is ten years consecutive to count one, the thirty years that I imposed there.

Upon direct appeal of his convictions, this Court affirmed his convictions in an unreported opinion, *Wesley v. State*, No. 634, Sept. Term, 2007 (filed August 14, 2009) (*Wesley I*). In that appeal, appellant raised no claim concerning the legality of his sentence.

In December 2013, appellant filed a motion in the circuit court seeking to correct an illegal sentence. He alleged that his sentence was illegal because it was ambiguous. He claimed that the sentence was ambiguous because, according to him, on the one hand, the court imposed his sentences consecutively, and on the other hand, both sentences had the same start date. Therefore, according to appellant, under the rule of lenity, he was entitled

to have his sentences construed as having been imposed concurrently.¹ The circuit court denied that motion, appellant appealed that decision to this Court, and we affirmed the judgment of the circuit court in an unreported opinion, *Wesley v. State*, No. 814, Sept. Term, 2014 (filed May 1, 2015) (*Wesley II*), for two reasons. *First*, we found that “[t]he error appellant complains of on appeal does not constitute an inherently illegal sentence[]” within the meaning of Maryland Rule 4-345. (Slip op at 5). *Second*, we held that, even if such an error constituted an illegal sentence under Maryland Rule 4-345, that there was nothing ambiguous about appellant’s sentence because the circuit court unambiguously imposed his sentences consecutively. (Slip op at 6-7).

In November 2021, appellant, acting *pro se*, filed a motion to correct an illegal sentence in the circuit court once again claiming that his sentence was ambiguous because, according to him, it is not clear whether his two sentences were imposed consecutively or concurrently.

As evidence that his sentence was ambiguous appellant claimed that: (1) after the court imposed sentence, he asked his lawyer “what [had I] got sentenced to” and his lawyer “told [him] not to worry because the thirty years would eat up the ten years”; (2) his commitment records showed that his 10-year sentence for second-degree assault is consecutive to his 30-year sentence for second-degree murder, but, at the same time, the records also showed that the two sentences have the same start date and are both “to be

¹ The rule of lenity provides, in part, that “if doubt exists as to the proper penalty, punishment must be construed to favor a milder penalty.” *Wilson v. Simms*, 157 Md. App. 82, 98 (2004).

[run] concurrent with any other outstanding or unserved sentence”; (3) a September 6, 2018 circuit court order denying a request for inpatient substance abuse evaluation/treatment stated that appellant was “convicted in 2007 of Second Degree Murder and Second Degree Assault and was sentenced to 30 years['] incarceration”; and (4) a September 9, 2021 document titled “Preliminary Review” from the Inmate Grievance Office addressing a Division of Correction disciplinary matter stated that he was “serving a sentence of 30 years for a conviction of First Degree Murder and a concurrent sentence of 10 years for Second Degree Assault.”

On December 16, 2021, the circuit court summarily denied appellant’s motion to correct an illegal sentence, from which appellant noted the present appeal in which he continues to maintain that his sentence is ambiguous and therefore illegal.

DISCUSSION

In *Nichols v. State*, 461 Md. 572 (2018), the Court of Appeals made clear that the law of the case doctrine, which bars relitigation of an issue that has been presented to, and rejected by, an appellate court, applies to a motion to correct an illegal sentence filed pursuant to Maryland Rule 4-345 notwithstanding that the Rule states that such a motion may be filed “at any time[.]” *Id.* at 593.

Appellant’s 2021 re-packaged argument that his sentence is ambiguous and therefore illegal is analytically indistinct from his 2013 argument that we previously considered and rejected in *Wesley II*. As such, his argument is barred as law of the case.

Consequently, we shall affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**